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Deputy Commissioner  
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Department of Business Oversight  
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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	Organization CRD No. 164984
	)	
THE COMMISSIONER OF BUSINESS	)	
OVERSIGHT,	)	CONSENT ORDER
	)	
Complainant,	)	
	)	
v.	)	
	)	
DEFENSIVE PORTFOLIO MANAGEMENT	)	
CORP.,	)	
	)	
Respondents.	)	
	)	
	)	

Respondents Defensive Portfolio Management Corp. (“DPM”), and Complainant, the  
Commissioner of Business Oversight (“Commissioner”), enter into this Consent Order (“Order”)  
based on the following facts:

**RECITALS**

A. The Commissioner is authorized to administer and enforce the provisions of the Corporate  
Securities Law of 1968 (“CSL”) (Corp. Code, § 25000 et seq.) and the regulations promulgated  
thereunder (Cal. Code Regs., tit. 10, § 250.9 et seq.), which includes the licensure and regulation of  
investment advisers.

1 B. Respondent DPM (Central Registration Depository No. 164984) was a California corporation,  
2 with its primary place of business, currently, at 1653 7th Street, Santa Monica, California 90401-  
3 3323.

4 C. Lee West (West) represents that he was the principal and owner of DPM and has authority to  
5 consent to this Order on DPM's behalf. At all times relevant to this Consent Order, DPM was  
6 represented by a law firm that acted as DPM's Super Account Administrator (SAA) and Additional  
7 Regulatory Contact with the Financial Industry Regulatory Authority, and as a "User" with  
8 associated privileges, as well as agent and authorized signatory on DPM's behalf to receive and  
9 execute all agreements on all compliance related responses and communications with state, federal,  
10 regulatory and administrative authorities ("Regulatory Contact and Counsel").

11 D. DPM operated an investment adviser business under a previous certificate issued by the  
12 Department of Business Oversight ("Department") (CRD No. 120515), which was revoked on  
13 August 22, 2011, for "failure to update annual amendment or brochure." Specifically, on July 28,  
14 2010, the Securities and Exchange Commission released a revised Form ADV, amending Part 2-- the  
15 firm brochure and brochure supplement. This "new Part 2" required investment advisers to provide  
16 clients with a brochure and brochure supplement written in narrative form, in plain English. The  
17 Department adopted this new Part 2, with a mandatory effective date of January 1, 2011. On  
18 September 1, 2010, the Department sent letters to all active investment advisers, including DPM's  
19 Regulatory Contact and Counsel, notifying them of this new requirement and the timeline for  
20 compliance. The Department also posted this information on its website. All investment advisers  
21 were required to include the new Part 2, with their required, annual ADV updating amendment, by  
22 March 31, 2011. The Department notified investment advisers that it would not take any  
23 administrative action if the new Part 2 was uploaded by May 30, 2011, but that "monetary and/or  
24 other sanctions may be considered if Part 2 is filed after May 30, 2011."

25 E. Neither DPM nor its licensed Regulatory Contact and Counsel filed the required annual  
26 updating amendment and/or the new Part 2 of DPM's form ADV. On August 22, 2011, DPM's  
27 investment adviser certificate was summarily revoked by the Department for "failure to update  
28 annual amendment or brochure." Written notice of the Department's intent to revoke and the

1 subsequent revocation of the certificate were sent by certified mail, return receipt requested, to  
2 DPM's registered business address. DPM did not receive the notices sent by certified mail, as no one  
3 was present at its Regulatory Contact and Counsel's offices to sign for receipt when the postal service  
4 repeatedly attempted to deliver them. Notices were returned to the Department as "undeliverable" by  
5 the postal service.

6 F. On August 1, 2012, DPM's Regulatory Contact and Counsel filed an application to again  
7 obtain an investment adviser certificate for DPM. It is DPM's contention that DPM's Regulatory  
8 Contact and Counsel did not inform DPM that DPM was not in compliance or that DPM was  
9 precluded from conducting advisory services. DPM's Regulatory Contact and Counsel drafted and  
10 filed DPM's ADV. During a review of the application, the Department's examiners learned that  
11 DPM's ADV represented that DPM had 25 accounts with assets under management of \$30 million.  
12 Based on these ADV representations, the Department's examiners asked DPM's Regulatory Contact  
13 and Counsel why DPM had not complied with the certification requirement of Corporations Code  
14 section 25230, prior to providing these investment advisory services. By response dated November  
15 29, 2012, DPM's Regulatory Contact and Counsel represented to the Department that DPM's ADV  
16 was out of date, and that DPM was "not presently being compensated for managing any assets."

17 G. On at least four separate occasions in 2012 (October 5, 2012; November 29, 2012; December  
18 17, 2012; and December 19, 2012), DPM or its Regulatory Contact and Counsel represented to the  
19 Department, in writing, that DPM was not conducting any business; had no investment advisory  
20 clients; was not being compensated for managing any assets; had ceased doing business as an  
21 investment adviser approximately three years ago; had not collected any fees for providing  
22 investment advisory services for over three years for all but one client; and DPM's Regulatory  
23 Contact and Counsel communicated that DPM understood that "until such time as the investment  
24 adviser certificate is issued, DPM may not provide investment advisory services to any new clients  
25 and it may not charge or collect any fees from existing clients." West has represented to the  
26 Department that DPM's Regulatory Contact and Counsel assured him that DPM's registration would  
27 soon be revived but did not communicate the severity of the matter.

1 H. On January 16, 2013, the Department issued DPM a new investment adviser certificate, CRD  
2 No. 164984.

3 I. In 2016, the Department began a routine, regulatory examination of DPM. The Department  
4 conducted a standard entrance interview with West on October 18, 2016. During the interview, West  
5 stated that DPM continued to provide investment advisory services to, and collect investment  
6 advisory fees from one client (DPM's client since 2006), throughout the August 22, 2011 to January  
7 16, 2013 period that DPM was not licensed. During the entrance interview, West provided the  
8 Department with all business records required under examination procedures and requirements.

9 J. West, on behalf of DPM, subsequently provided additional information and documentation  
10 regarding its business activities, in response to two separate, supplemental requests for additional  
11 information and documents.

12 K. Records produced by West during the recent regulatory examination confirm that DPM  
13 provided investment advisory services, and received investment advisory fees, during the time that  
14 DPM was not licensed. Specifically, DPM received \$267,496.00 in investment adviser fees for  
15 servicing client accounts, from October 1, 2011 through December 31, 2012, while DPM did not hold  
16 an investment advisor certificate from the Department and was, therefore, unlicensed.

17 L. West has advised the Department that DPM had only one investor, from which all fees  
18 referenced in Paragraph K, were earned. During this period, DPM asserts that its one client was  
19 aware that DPM acted as a relationship manager, that DPM had at all times engaged an SEC  
20 Registered Investment Advisor to manage DPM's client's assets, that DPM paid most of the client's  
21 fees to the SEC Registered Investment Advisor, and that only a small portion of the fee was paid to  
22 DPM. DPM has offered to provide proof to the Department that its client has not requested the return  
23 of any fees.

24 M. The Commissioner finds that DPM violated CSL section 25230, subdivision (a), which  
25 provides: "It is unlawful for any investment adviser to conduct business as an investment adviser in  
26 this state unless the investment adviser has first applied for and secured from the commissioner a  
27 certificate, then in effect, authorizing the investment adviser to do so or unless the investment adviser  
28 is exempted ... or ... subject to Section 25230.1."

N. The Commissioner is of the opinion that, after August 22, 2011, when its license was revoked by the Department for the failure to update annual amendment or brochure, DPM conducted business as an investment adviser in this state without first applying for and securing from the Commissioner a certificate, then in effect, authorizing it to do so, in violation of Corporations Code section 25230, subdivision (a).

O. The Department informed DPM of its findings and of its intent to bring an administrative action to require disgorgement of the fees charged to client after its license had been revoked, in addition to other remedies authorized by the CSL.

P. The Commissioner is of the further opinion that DPM, through its Regulatory Contact and Counsel, made untrue statements of material fact while applying for a new investment adviser certificate, in violation of Corporations Code section 25245. As outlined above in Paragraph G, DPM or its agent represented it had not conducted any investment advisory business or collected any fees, during the unregistered period of August 22, 2011-January 16, 2013. The Department recognizes that West willingly and voluntarily provided full disclosure during his interviews and provided all business records required under examination procedures and requirements, as outlined above in Paragraphs I, J, K and L.

Q. The Department informed DPM of its findings and of its potential intent to bring an administrative action to require penalties, for having made false statements to the Commissioner, in addition to other remedies authorized by the CSL.

R. DPM admits to the jurisdiction of the Department and consents to entry of this Order by the Department, as settlement of the issues contained in this Order, without the need to file an enforcement action for its violations.

S. The Commissioner finds that this Order is necessary, in the public interest, for the protection of investors, and consistent with the purposes, policies, and provisions of the CSL.

### **TERMS**

1. **Desist and Refrain Order.** Pursuant to Corporations Code section 25532, subdivision (b), DPM agrees to desist and refrain from acting as an investment adviser in the State of California, unless and until it applies for and secures from the Commissioner a certificate, authorizing it to act as

an investment adviser.

2. Disgorgement of Fees. DPM agrees that in lieu of disgorging all fees received during the period of unlicensed activity, it will provide proof to the Department that DPM's client is not requesting the return of any fees from any party, which proof shall be due with 30 days of the Effective Date of this Consent Order as defined in Paragraph 9.

3. Administrative Penalties. DPM agrees to pay administrative penalties, in the amount of \$10,000.00, due and payable to the Department, within 30 days of the Effective Date of this Order. The penalty shall be made payable, in the form of a cashier's check or Automated Clearing House ("ACH") deposit, to the "Department of Business Oversight," and transmitted to:

ATTN: Accounting-Litigation  
The Department of Business Oversight  
1515 K Street, Suite 200  
Sacramento, California 95814-4052

Notice of payment shall be sent contemporaneously via mail and email to the attention of: Mary Ann Smith, Deputy Commissioner, Enforcement Division, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814 and MaryAnn.Smith@dbo.ca.gov.

4. Surrender of Registration. DPM filed a Notice of Surrender of its Investment Adviser Certificate (CRD No. 164984) ("Surrender") with the Department, on June 20, 2017. The Commissioner agrees to accept DPM's Surrender subject to the satisfactory completion of the conditions in Paragraphs 2 and 3, which determination shall be at the sole discretion of the Commissioner.

5. Remedy for Breach. In the event DPM fails to comply with the terms of this Order, it is hereby stipulated and agreed by DPM that this Order may be converted to an enforceable civil judgment for administrative penalties at the time of the breach, pursuant to the procedure specified by Corporations Code section 25532, subdivision (f); and that such civil judgment may be entered by the court on an ex parte basis without the need of further notice or hearing to DPM. It is further agreed and stipulated that in the event the Commissioner determines that DPM has not met the conditions required in Paragraph 4 to accept Surrender of its investment adviser certificate, the Commissioner shall issue an order revoking the investment advisor certificate of DPM; and that such order will be

final and not subject to further review or appeal by DPM.

6. Waiver of Hearing Rights. DPM acknowledges that the Commissioner is ready, willing, and able to proceed with the filing of an administrative action on the charges contained in this Consent Order, and DPM hereby waives the right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CSL, the Administrative Procedures Act (Gov. Code, § 11400 et seq.), and the Code of Civil Procedure. DPM further expressly waives any requirement for the filing of an Accusation that may be afforded by Government Code section 11415.60, subdivision (b) or any other provision of law; and by waiving such rights, DPM effectively consents to this Order becoming final.

7. Future Actions by the Commissioner. The Commissioner reserves the right to bring any future action(s) against DPM or any of its partners, owners, officers, directors, shareholders, employees, or successors for any and all unknown or future violations of the CSL. This Order shall not serve to exculpate DPM or any of its partners, owners, officers, directors, shareholders, employees, or successors from liability for any and all unknown or future violations of the CSL.

8. Public Record. DPM hereby acknowledges that this Order is and will be a matter of public record.

9. Effective Date. This Order shall become effective when signed by the Parties and delivered via email to admin@drca.com, and West's counsel, Mark Hiraide, at mth@msk.com.

Dated: August 11, 2017

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: August 11, 2017

DEFENSIVE PORTFOLIO MANAGEMENT CORP

By \_\_\_\_\_  
LEE A. WEST  
Owner, President and Chief Compliance Officer